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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

KRISTIN SWEARINGEN,

Plaintiff,

v.

AMAZON.COM SERVICES, INC. and  
AMAZON.COM INC., Delaware corporations,  
and, AMAZON.COM.DEDC, LLC, a Delaware  
limited liability company,

Defendants.

Case No. 3:19-cv-01156-JR

AMENDED CLASS ACTION  
COMPLAINT

Jury trial demanded

**INDIVIDUAL AND CLASS ACTION COMPLAINT**

1.

Kristin Swearingen (hereinafter “plaintiff”) complains as follows against Amazon.com Services, Inc. and Amazon.com Inc., Delaware corporations, and Amazon.com.dedc, LLC, a Delaware limited liability company (hereinafter collectively “Amazon”), both on behalf of herself individually and, in addition, on behalf of the other similarly situated employees.

2.

This is an action under state wage and hour law for certain present and former employees of Amazon to recover unpaid wages, penalty wages, and attorney fees, costs, and disbursements (and pre- and post-judgment interest thereon). All allegations herein are made to the best of plaintiff's and her counsel's good-faith knowledge, information and belief, based upon the evidence adduced to date, and plaintiff reserves the right to amend the complaint upon the discovery of additional facts.

### **PARTIES**

3.

At all material times, plaintiff and the class members were employees of Amazon.

4.

Amazon.com Services, Inc. and Amazon.com Inc. are Delaware corporations, and Amazon.com.dedc, LLC is a Delaware limited liability company. Each of these entities, and all of them, employed plaintiff and the class members in Multnomah County, Oregon and elsewhere.

### **COMMON FACTS CONSTITUTING CLAIMS FOR RELIEF**

5.

Amazon rounded plaintiff's and the other class members' time punches, resulting in a consistent net underpayment to them.

6.

Amazon failed to pay plaintiff and the other class members for breaks of fewer than 30 minutes, resulting in a consistent net underpayment to them.

7.

Amazon failed to pay plaintiff and the class members all earned and unpaid wages within the statutory deadline to do so upon termination of their employment (including,

but not limited to, as a result of the above violations).

### **CLASS ACTION ALLEGATIONS**

8.

Amazon engaged in acts and practices that violated plaintiff's and the class members' rights under Oregon statutes. This action is brought on behalf of two classes:

- a. The Rounding Class, consisting of all current and former Amazon employees who received a paycheck for work performed at the DPD1, PDX5, PDX9, and/or UOR1 facilities (*i.e.*, excluding the data center employees) in Oregon on or after December 20, 2012 during which they lost time due to Amazon's rounding policy, who do not file a timely request to opt-out of the Class; and
- b. The Unpaid Break Class, consisting of all current and former Amazon employees who received a paycheck for work performed at any facility in Oregon on or after December 20, 2012 during which they had a clocked-out break (*i.e.*, either a rest period or a meal period) of fewer than 30 minutes, who do not file a timely request to opt-out of the Class.

### **Numerosity**

9.

Each of the above classes is so numerous that joinder of all members is impractical, consisting of well over 1,000 persons each.

### **Commonality**

10.

There are questions of law and fact common to each class, which predominate over any issues involving only individual class members. The principal questions are:

- a. Whether Amazon's common policies and procedures regarding rounding of

- time punches resulted in underpaying its employees and failure to promptly pay them all earned and unpaid wages, and whether such violations were willful;
- b. Whether Amazon's common policies and procedures regarding failure to pay for breaks (both rest periods and meal periods) of fewer than 30 minutes resulted in underpaying its employees and failure to promptly pay them all earned and unpaid wages, and whether such violations were willful; and
  - c. What remedies are available for the above-listed violations.

### **Typicality**

11.

Plaintiff's claims are typical of those of the other class members because:

- a. Plaintiff is a member of each class.
- b. Plaintiff's claims stem from the same practice or course of conduct that forms the basis for the classes' claims.
- c. All of each class members' claims are based on the same facts and legal theories.
- d. There is no antagonism between the interests of plaintiff and either class's members, because their claims are for damages provided to each class member separately by statute or the common law.

### **Adequacy of Representation by Plaintiff**

12.

Plaintiff will fairly and adequately protect the interests of each class because:

- a. There is no conflict between plaintiff's claims and those of the other class members.

- b. Plaintiff has retained counsel experienced in handling class actions involving wage and hour law, who will vigorously prosecute this litigation. Plaintiff's counsel has already committed substantial time and resources towards this case and remains willing and able to devote whatever additional future time and resources are necessary to pursue this litigation to completion.
- c. Plaintiff's claims are typical of the claims of each class's members in that her claims stem from the same practice and course of conduct that forms the basis of the classes' claims.

### **Predominance and Superiority of Class Action**

13.

Common issues predominate in this class action and class resolution of this case is superior to other available methods for its fair and efficient adjudication, for at least the following reasons:

- a. The prosecution of separate actions by the class members could both result in inconsistent adjudications establishing incompatible pay practices and, as a practical matter, dispose of the legal claims of class members who are not parties to such separate adjudications or impede their ability to protect their interests.
- b. The common questions of law and fact described above predominate over questions affecting only individual members, and the questions affecting individuals primarily involve only calculations of individual damages.
- c. Individual class members would have little interest in controlling the litigation due to the relatively small size of most claims, the expense of the litigation, and because the named plaintiff and her lawyer have already

- invested significant resources in the case and will continue to vigorously pursue the claims on behalf of the class members.
- d. To plaintiff and her counsel's knowledge, no other similar litigation has been commenced.
  - e. This is a desirable forum because Amazon does business in this state and many class members reside here.

### **FIRST CAUSE OF ACTION**

Oregon Unpaid Wages  
(both classes)

14.

All previous paragraphs are incorporated by reference herein.

15.

Pursuant to ORS 652.120, Amazon was required to pay plaintiff and the class members all wages due, when those wages were due, but willfully failed to do so.

16.

Plaintiff and the class members are entitled to collect the wages due in an amount to be proven at trial, together with attorney fees, costs, and disbursements, as well as pre- and post-judgment interest.

### **SECOND CAUSE OF ACTION**

Oregon Unpaid Wages Upon Termination  
(Rounding Class only)

17.

All previous paragraphs are incorporated by reference herein.

18.

Pursuant to ORS 652.140, Amazon was required to pay plaintiff and the Rounding Class members all wages due by the statutory deadline upon termination of their

employment but willfully failed to do so.

19.

In addition to any wages remaining due, plaintiff and the Rounding Class members are entitled to collect the 30 days of statutory penalty wages provided by ORS 652.150, together with attorney fees, costs, and disbursements, as well as pre- and post-judgment interest.

### **THIRD CAUSE OF ACTION**

Oregon Unpaid Breaks  
(Unpaid Break Class only)

20.

All previous paragraphs are incorporated by reference herein.

21.

Pursuant to ORS 653.261, Amazon was required to pay Plaintiff and the Unpaid Break Class members for clocked-out breaks (both rest periods and meal periods) of fewer than 30 minutes but willfully failed to do so.

22.

Plaintiff and the Unpaid Break Class members are entitled to their unpaid wages, in an amount to be proven at trial, in addition to 30 days of penalty wages, pursuant to ORS 653.055 and (by incorporation) 652.150, together with attorney fees, costs and disbursements, as well as pre- and post-judgment interest.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests that the Court certify the Rule 23 classes as indicated herein; award her and the other class members such actual, penalty, and other damages as they may be individually entitled to, as set forth by category above and in amounts to be proven at trial; award the attorney fees, costs, and expenses of suit of plaintiff and the

other class members; order Amazon to pay pre-judgment and post-judgment interest on all amounts due to plaintiff and the other class members as a result of their claims; and order such further or alternative relief as the Court deems appropriate.

DATED this 11<sup>th</sup> day of August, 2020

JON M. EGAN, P.C.

*s/ Jon M. Egan*

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